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from the wars of the past between barbarians — every rule of that description has been systematically, flagrantly and outrageously violated during the past year by the Empire of Germany.

The subject upon which I will ask your attention for a few minutes in opening this session is

## THE EFFECT OF DEMOCRACY ON INTERNATIONAL LAW

ADDRESS BY ELIHU ROOT

*President of the Society*

In trying to estimate the future possibilities of international law, and to form any useful opinion as to the methods by which the law can be made more binding upon international conduct, serious difficulties are presented in the unknown quantities introduced by the great war, which is steadily drawing into its circle the entire civilized world. Hitherto, we have been unable to form any real judgment as to which of the two warring groups of nations will succeed in the end. Our expectations and beliefs upon that question have been the products of our sympathies and our hopes and of an optimism for which it is now happily more easy to find just grounds than ever before. Nor have we been able to measure the effects of the war upon national character, and the probable results in national modes of thought and conduct.

A just estimate of such forces is not easy. The modern era of nationalities has been marked by three great convulsions which turned the minds of all civilized men towards peace, and led them to seek means to make peace secure.

The Thirty Years' War produced the Peace of Westphalia and the system of independent nationalities in Europe, and it produced Grotius and the science of international law; and practically every Power in Europe except the Ottoman was a party to the agreement to maintain the system thus established. Yet, the century which followed exhibited the most cynical and universal disregard for the law, and for the treaty, and for all treaties.

The Napoleonic Wars produced the Treaty of Vienna and the Holy Alliance. That sincere but misguided effort sought to fix the limits and regulate the conduct of the nations of Europe in accordance with the principles which the treaty-making Powers then believed to be in keeping with right and justice, and to be effective for the permanent peaceful organization of the community of nations, and it sought to maintain the *status quo* by the establishment of a League to Enforce Peace in accordance with

their conception. Yet, the arrangements were conceived by minds imbued with the spirit of the past, and became of no effect when tested by the changes wrought by the spirit of the future. The old bottles were filled with new wine and could not contain it; so, the scheme came to naught.

Both of these efforts to secure permanent peace under the rule of law failed, because the unappreciated forces working for change and growth became stronger than the gradually decreasing restraint of agreements to maintain a fixed and immutable relation of territory and opportunities among the nations. It is reasonable to infer that a similar result must follow any attempt to base a system of international law upon definite and rigid limitations devised to meet the expediency of the moment. The law of life is growth, and no generation can prevent the growth of future generations by fixing in accordance with its ideas the specific conditions under which they are to live. As we look back, we see a multitude of ancient wrongs protected by the law of nations, naturally enough, because the law has been made by Powers in possession. We have a vague impression that international wrongs are cured by time. That is not always so. There is no international statute of limitations. Time alone cures no wrong. The people to whom wrong is done may be destroyed, as the Turks are destroying the Armenians; or the wronged people may be reconciled to the new conditions like the Saxons in England; but, for example, the unforgiven wrong of the Turk in Europe, and the unforgiven wrong of the partition of Poland, are always forces working against the law that protects them. The maintenance of the redress of such wrongs is merely a question of relative power. The rise in power of Christian Europe, and the decadence of the Ottoman Empire, make inevitable the complete reflux of the tide which once reached the walls of Vienna, and even to the valley of the Loire. No human laws or conventions could bind the forces which work through centuries to achieve such results. The futility of efforts to control such movements of mankind by the short-sighted policies of the passing day cannot be better illustrated than by the misplaced energy and sacrifice of the Crimean War and the fatuous ingenuity of the Congress of Berlin which sought to bolster up and preserve the sovereignty of the Turk.

As we consider how it may be possible to reestablish the law of nations upon a durable basis, we must realize that past experience indicates that no system of law which depends upon the physical partition of the earth dictated by the expediency of the time, no law which must be broken in order that living wrongs shall be redressed, or in order that the new ideas of the future may find room for growth, can be permanent.

We should therefore inquire whether the political and social conditions to which we may reasonably look forward after the war, the forces that are to move mankind, the trend of development, will be such as to enable us in our day to escape the errors of our predecessors, and to establish upon some basis of principle a system of international law which can be maintained and enforced.

The greatest change in the conditions of national life during the past century has been in the advance and spread of democratic government, and the correlative decrease in the extent and power of autocratic and dynastic governments. It is impossible to regard the advance of democracy as being merely local or temporary. It has been the result of long-continued and persistent progress, varying in different countries according to the character of the people and the nature of the obstacles to be overcome, but, in its nature, essentially the same in all countries.

England in her steady-going undemonstrative way has moved along from government by a king claiming divine right to a Commons representing popular right through the revolution of 1688, which established the nation's right to choose its king, through that civil war over the rights of British subjects known as the American Revolution, through chartism and Catholic emancipation, the Reform Bill of 1832, the franchise extension of 1867, the abandonment of the king's veto power, and the establishment of the Commons' right to pass bills over the rejection of the House of Lords.

France in her own different way with much action and reaction traveled towards the same goal through the States General and the Constituent Assembly, through the Reign of Terror, and her amazing defense of the first Republic against all Europe, through the heroic surgery of Napoleon's career, the Bourbon restoration, the assertion of her right to choose her own king in 1830, and the assertion of her right to dispense with a king in 1848, the plebiscite and the second Empire, the Commune and the third Republic, which has grown in stability and capacity for popular government until the steadiness and self-control and noble devotion of the French people under suffering and sacrifice has come to be one of the amazing revelations of these terrible years.

Italy, struggling out of the control of a multitude of petty tyrants sustained by foreign influence, established her newly-won unity and independence upon the basis of representative parliamentary government.

Spain has regained and strengthened the constitution of which Ferdinand VII and the Holy Alliance deprived her.

Throughout the greater part of the world constitutions have become

the order of the day. Switzerland, Belgium, Holland, Portugal, all Scandinavia, all Latin-America, have established their governments upon constitutional bases. Japan, emerging from her military feudalism, makes her entry into the community of civilized nations under a constitutional government. China, throwing off the domination of the Manchu, is striving to accustom her long-suffering and submissive millions to the idea of constitutional right. The great self-governing British Dominions bound to the mother country only by ties of tradition and sentiment have shown that free democracies can respond to moral forces with a splendid power of loyalty that no coercion could inspire. And, now, Russia, extirpating the government which has been for modern times the typical illustration of autocracy, is engaged in establishing the new self-control of that vast Empire upon the basis of universal suffrage and republican institutions.

The political conception of control from above by monarchs exercising divine right is not merely disputed by philosophers and reformers; it has faded and grown dim in the minds of the millions of men in the civilized nations, and in its place has spread throughout the world the political conception of constitutional government exercising control by authority of the peoples who are governed.

The persistence and extent of this change in the political and social conditions of national life forbid the idea that it is the child of individual minds or local provocations or temporary causes, and distinguish it as one of those great and fundamental movements of the human mind which no power can control, and which run their course inevitably to the end in an unknown future. The existence and assured continuance of this process of development of democracy is the great fact forecasting the future conditions under which the effort to reinstate the law of nations is to be made.

What is to be the effect of this change in conditions upon the possibility of making international law relatively permanent? In considering this question, some facts can be clearly perceived.

The substitution of a democratic for an autocratic regime removes the chief force which in the past has led nations to break over and destroy the limitations of law; that is, the prosecution of dynastic policies. Such policies in general have in view the increase of territory, of dominion, of power, for the ruler and the military class or aristocracy which surrounds the ruler and supports his throne. The benefit of the people who are ruled is only incidentally — if at all — involved. If we turn back to the causes which destroyed the peace of the world under the dispositions made by the Treaty of Westphalia, the mind naturally rests on the War of the Spanish Succession which drenched Europe in blood through the first decade of

the eighteenth century, and ended in the Treaty of Utrecht only when Louis XIV was reduced to exhaustion. What was that about? Nothing more nor less than the question what royal house should have its power increased by a marriage that would ultimately enable it to control the territory and wield the power of Spain for its own aggrandizement. The interests of the people of Spain or the people of France or of any other country furnished no part of the motive power. What caused the War of the Austrian Succession a generation later, when Frederick (called "The Great") marched his army into Silesia to wrest that province from the feeble hands of young Maria Theresa in flagrant violation of his solemn promise to protect her title under the covenants of the pragmatic sanction, and when the nations of Europe gathered like buzzards about one dying, eager to share in the dismemberment of the possessions of the House of Austria? It was the desire of royal princes to increase their power and glory regardless of law and justice, and the welfare of peoples, and, incidentally, a desire by some states to prevent that increase, lest the same rule of spoliation might more readily be applied to them.

Underlying the whole age-long struggle to maintain the balance of power in Europe has been the assumption that increased power would be used for aggression and to secure further increase of power by the conquest of territory and the subjection of its inhabitants; and the common experience of mankind under the autocratic system of government by divine right has justified the assumption. It was a perfect understanding of this characteristic of autocratic government that inspired the words of President Monroe's famous declaration: "We should consider any attempt on their part (the European Powers) to extend their system to any portion of this hemisphere as dangerous to our peace and safety."

Against the deep and settled purpose of a ruling family or a ruling aristocratic class to enlarge its power, continuing from generation to generation, usually concealed until the favorable moment for action comes, always justified or excused by specious pretexts, the advocates of peace, or justice, or humanity, or law, are helpless. All other causes of war can be reached. International misunderstandings can be explained away. Dislikes and suspicions can be dissipated by intercourse, and better knowledge, and courtesy, and kindness. Considerate justice can prevent real causes of war. Rules of action to prevent controversy may be agreed upon by diplomacy and conferences and congresses. Honest differences as to national rights and duties may be settled by arbitration, or judicial decision; but, against a deep and persistent purpose by the rulers of a great nation to take away the territory of others, or to reduce others to subjec-

tion for their own aggrandizement, all these expedients are of no avail. The Congresses of Westphalia, of Vienna, of Berlin, and a multitude of others less conspicuous, have sought to curb the evil through setting limits upon power by treaty. They have all failed. The Peace Conferences at The Hague have sought to diminish the evil by universal agreement upon rules of action. The rules and the treaties have become "scraps of paper."

The progress of democracy, however, is dealing with the problem by destroying the type of government which has shown itself incapable of maintaining respect for law and justice and resisting the temptations of ambition, and by substituting a new form of government which in its nature is incapable of proceeding by the same methods, and necessarily responds to different motives and pursues different objects from the old autocratic offenders. Only when that task has been substantially accomplished will the advocates of law among nations be free from the inheritance of former failure. There will then be a new field open for a new trial, doubtless full of difficulties of its own, but of fair hope and possibilities of success.

Self-governing democracies are indeed liable to commit great wrongs. The peoples who govern themselves frequently misunderstand their international rights and ignore their international duties. They are often swayed by prejudice and blinded by passion. They are swift to decide in their own favor the most difficult questions upon which they are totally ignorant. They are apt to applaud the jingo politician who courts popularity by public insult to a friendly people and to condemn the statesman who modifies extreme demands through the concessions required by just consideration for the rights of others. All these faults, however, are open and known to the whole world. The opinions and motives from which they proceed, the real causes of error, can be reached by reason, by appeal to better instincts, by public discussion, by the ascertainment and dissemination of the true facts.

There are some necessary features of democratic self-government which tend towards the progressive reduction of tendencies to international wrong-doing. One is that democracies are absolutely dependent for their existence upon the preservation of law. Autocracies can give commands and enforce them. Rules of action are a convenience, not a necessity for them. On the other hand, the only atmosphere in which a democracy can live between the danger of autocracy, on one side, and the danger of anarchy, on the other, is the atmosphere of law. Respect for law is the essential condition of its existence; and, as in a democracy the law is an expression of the people's own will, self-respect, and personal pride, and patriot-

ism demand its observance. An essential distinction between democracy and autocracy is that while the government of an autocracy is superior to the law, the government of a democracy is subject to the law. The conception of an international law binding upon the governments of the world is therefore natural to the people of a democracy, and any violation of that law which they themselves have joined in prescribing is received with disapproval, if not with resentment. This is well illustrated by the attitude of the people of the separate States of the American Union towards the decisions of the Supreme Court of the United States passing upon the exercise of power by State Governments. Physical force has never been used to compel conformity to those decisions. Yet, the democratic people of the United States have answered Jackson's contemptuous remark, "John Marshall has made his decision; now let him enforce it." The answer is that it is the will of a self-governed democracy to obey the law, which it has itself established, and the decisions of the great tribunal which declares the law controlling State action will be accepted and observed by common consent and enforced by the power of public opinion.

Another necessary feature of democratic government is that the exercise of the power of popular self-government is a continual training of all citizens in the very qualities which are necessary for the maintenance of law between nations. Democratic government cannot be carried on except by a people who acquire the habit of seeking true information about facts, of discussing questions of right and wrong, of interest, and of possible consequences, who have kindly consideration for opposing opinions, and a tolerant attitude towards those who differ. The longer a democracy preserves itself through the exercise of these qualities, the better adapted it is to apply the same methods in the conduct of its international business, and the result is a continually increasing certainty that international law will be observed in a community of democratic nations.

The most important difference, however, between the two forms of government, is that democracies are incapable of holding or executing those sinister policies of ambition which are beyond the reach of argument and the control of law. A democracy cannot hold such policies, because the open and public avowal and discussion which must precede their adoption by a democracy is destructive of them; and it cannot execute such policies because it uniformly lacks the kind of disciplined efficiency necessary to diplomatic and military affirmatives. The settled and continuous policies of a democracy are defensive. Nearly ninety years ago De Tocqueville in his survey of "Democracy in America" recorded what he deemed to be a weakness of our system of government in foreign affairs. He said:

Foreign politics demand scarcely any of those qualities which a democracy possesses, and they require on the contrary the perfect use of almost all those faculties in which it is deficient. Democracy is favorable to the increase of the internal resources of the State; it tends to diffuse a moderate independence; it promotes the growth of public spirit, and fortifies the respect which is entertained for law in all classes of society; and these are advantages which only exercise an indirect influence over the relations which one people bears to another. But a democracy is unable to regulate the details of an important undertaking, to persevere in a design, and to work out its execution in the presence of serious obstacles. It cannot combine its measures with secrecy, and it will not await their consequences with patience. These are qualities which more especially belong to an individual or to an aristocracy, and they are precisely the means by which an individual people attains to a predominant position.

So long as foreign affairs were to continue as they were carried on in his day, De Tocqueville was doubtless right. It is because democracies are not fitted to conduct foreign affairs as they were conducted in De Tocqueville's day that the prevalence of democracy throughout the world makes inevitable a change in the conduct of foreign affairs. Such affairs when conducted by democratic governments must necessarily be marked by the absence of those undertakings and designs, and those measures combined with secrecy, prosecuted with perseverance, for which he declares democracies to be unfit.

This characteristic of popular governments is well illustrated by the hundred years of peace which we are all rather proud of preserving throughout the 3000 miles of boundary between Canada and the United States without fortifications or ships of war or armies. There have been many occasions when the tempers of the men on either side of the line were sorely tried. The disputes regarding the Northeastern Boundary, the Oregon Boundary, the Alaska Boundary, were acute; the affair of the *Caroline* on the Niagara River, the Fenian Raid upon Lake Champlain, the enforcement of the Fisheries Regulations, were exasperating and serious, but upon neither side of the boundary did democracy harbor those sinister designs of aggrandizement and ambition which have characterized the autocratic governments of the world. On neither side was there suspicion of any such designs in the democracy across the border. The purpose of each nation was merely to stand up for its own rights, and so reason has always controlled, and every question has been settled by fair agreement, or by arbitral decision; and, finally, for the past eight years a permanent International Commission with judicial powers has disposed of the con-

roversies arising between the citizens of the two countries along the border as unobtrusively and naturally as if the questions arose between citizens of Maryland and Virginia. Such has been the course of events, not because of any great design or far-seeing plan, but because it is the natural working of democratic government.

The incapacity of democracies to maintain policies of aggression may be fairly inferred from the extreme reluctance with which they incur the expense and make the sacrifices necessary for defense. Cherishing no secret designs of aggression themselves, they find it difficult to believe in the existence of such designs on the part of other nations. Only imminent and deadly peril awakens them to activity. It was this obstinate confidence in the peaceable intentions of all mankind which met Lord Roberts (honored, trusted and beloved as he was) when long before the present war he vainly sought to awaken the people of England to the danger that he saw so plainly in Germany's stupendous preparation for conquest. It is well known that when the war came France was almost upon the verge of diminishing her army by a reduction in the years of service. In our own country a great people, virile, fearless, and loyal, have remained indifferent to all the voices crying in the wilderness for preparation, because the American people could not be made to believe that anything was going to happen inconsistent with the existence everywhere of those peaceful purposes of which they themselves were conscious.

There is a radical incompatibility between popular self-government and continuous military discipline, for military control is in itself despotic. As compared with military autocracies, the normal condition of democracies is a condition of inferior military efficiency. This invariable characteristic of democracy leaves it no option in its treatment of autocracy. The two kinds of government cannot live permanently side by side. So long as military autocracy continues, democracy is not safe from attacks, which are certain to come sometime, and certain to find it unprepared. The conflict is inevitable and universal; and it is *à l'outrance*. To be safe democracy must kill its enemy when it can and where it can. The world cannot be half democratic and half autocratic. It must be all democratic or all Prussian. There can be no compromise. If it is all Prussian, there can be no real international law. If it is all democratic, international law, honored and observed, may well be expected as a natural development of the principles which make democratic self-government possible.

The democracies of the world are gathered about the last stronghold of autocracy, and engaged in the conflict thrust upon them by dynastic policy, pursuing the ambition of rulers under claim of divine right for their own

aggrandizement, their own glory, without regard to law or justice or faith. The issue to-day and to-morrow may seem uncertain, but the end is not uncertain. No one knows how soon the end will come, or what dreadful suffering and sacrifice may stand between; but the progress of the great world movement that has doomed autocracy cannot be turned back, or defeated.

That is the great peace movement.

There the millions who have learned under freedom to hope and aspire for better things are paying the price that the peaceful peoples of the earth may live in security under the protection of law based upon all-embracing justice and supreme in the community of nations.

The PRESIDENT. The next number on the program is "The Status of Armed Merchantmen" and the discussion upon that will be opened by Mr. Chandler P. Anderson, of the New York Bar.

### THE STATUS OF ARMED MERCHANTMEN

ADDRESS BY CHANDLER P. ANDERSON

*Of the New York Bar, formerly Counselor for the Department of State*

The status of armed merchantmen depends primarily upon whether their armament is for aggressive or defensive purposes. The merchantman armed for attack upon commerce or upon enemy ships loses its status as a merchantman and acquires that of an auxiliary cruiser or privateer, which puts it outside of the scope of the present discussion. On the other hand, a merchantman armed solely for self-defense retains its status as a private ship, either on the high seas or in the territorial waters of a neutral, so long as it attends strictly to its legitimate business of carrying cargoes and passengers. This was the accepted rule prior to the present war and until Germany discovered that a merchantman armed for defense and retaining its status as a private ship presented an obstacle to the unrestricted use of submarines as commerce destroyers.

Under the recognized rules, which were generally observed prior to Germany's lawless use of submarines, the increased protection against capture which a belligerent merchant ship gained by arming for self-defense was gained at the sacrifice of only a small part of the limited degree of protection which the law extended to unarmed vessels. Whether armed or unarmed, a belligerent merchant ship was liable to be sunk if captured, or if trying to escape or resisting capture, but if the defensively armed ship did not resist, or if, after resisting or trying to escape, ceased to defend